HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT PETITION No.1202 OF 2006

Between:

Kotta Narayana Murthy

… Petitioner

AND

The Sub-Registrar,
Jaggampet, East Godavari District
And another.

… Respondents

Counsel for the petitioner : Sri A.K.Kishore Reddy

Counsel for Respondents: G.P.For Revenue.

Dated: 26th December, 2006

: ORDER :

Per C.V.Nagarjuna Reddy, J

This appeal is directed against order dated 26-10-2006 passed by the learned Single Judge, whereby he summarily dismissed the writ petition filed by the appellant for quashing order dated 28-09-2004 passed by District Registrar-cum-Collector, Kakinada under Article 49-A (b) of the Indian Stamp Act, 1899 (for short, 'the Act').

The case of the appellant as reflected from the averments contained in the affidavit filed in support of the writ petition is that he along with his elder son's wife, her three daughters and his second son constituted a Hindu Joint Family. After the death of the appellant's father, who is said to have died intestate, the appellant and others submitted a partition deed before Sub-Registrar, Jaggampeta, East Godavari District on 07-02-2004 for registration. The latter determined the stamp duty at Rs.57,030/- which was duly paid. After about three months, the 2nd respondent issued notice dated 15-05-2004 to the appellant indicating therein that the partition deed presented by the appellant and five others was chargeable with stamp duty of Rs.6,95,100/- under Article 49-A (b) of Schedule I – A of the Act. Simultaneously, the 2nd respondent impounded the document and called upon the appellant and others to represent their cause against the proposed recovery of the deficit stamp duty and penalty under Section 40 of the Act. In the reply filed by him, the appellant submitted that the partition deed presented for registration was executed among the family members, namely, father, son and the wife of the deceased and his children and that such a document is chargeable under Article 40 of Schedule-I (A) with the same duty as Bottomry Bond No.14 for the amount or the market value of the separated share or shares of the property. It

was further mentioned that as per Article 14 of the same Act, the stamp duty payable is 3% only. After considering the reply of the appellant, the 2nd respondent passed order dated 28-09-2004, whereby he called upon the appellant to pay the deficit stamp duty of Rs.6,38,070/- with a penalty of Rs.5/- within 30 days from the date of receipt of the order.

The appellant challenged the aforementioned order of the 2nd respondent in Writ Petition No.21701 of 2006, which was dismissed by the learned Single Judge on the ground of laches and availability of the alternative remedy of appeal. The learned Single Judge gave liberty to the appellant to avail the remedy of appeal and also file an application for condonation of delay.

Since one of the grounds for dismissing the writ petition was delay in its filing, when the writ appeal was first taken up for admission and hearing on 15.11.2006, we called upon the appellant to file an additional affidavit and produce medical evidence in support of his plea of illness, as the affidavit filed by him in the writ petition contained a very vague assertion relating to his illness which allegedly was the reason for the delay of two years in filing the writ petition. Accordingly the appellant filed a detailed affidavit wherein it is mentioned that he was affected with paralysis stroke in the month of May 2004 and that he is taking treatment from Dr.M.Narsimha Murthy, B.Sc., M.B.B.S., at Jaggampet. The appellant also filed a medical certificate dated 20.11.2006 and various medical prescriptions, from a perusal of which we are satisfied that the appellant had been suffering from paralysis and on account of the same he was unable to file the writ petition earlier.

We have heard Sri A.K.Kishore Reddy, learned counsel for the appellant and the learned Government Pleader for Revenue on the issue of alternative remedy.

Learned counsel for the appellant contended that the order impugned in the writ petition was passed by the second respondent under

Section 40 of the Act and, therefore, the remedy of appeal provided under Section 47-A (4) and (5) of the Act is not available to him.

Learned Government Pleader supported the order under challenge and argued that the remedy of appeal is available to the appellant.

We have thoughtfully considered the respective submissions. For proper appreciation of the rival contentions, it will be appropriate to notice the relevant provisions of the Act. Section 33 of the Act lays down that if any instrument is produced before a person having authority to receive evidence or a person in charge of a public office, except an officer of police, and if he finds that such an instrument which is chargeable with duty is not duly stamped, he can impound the same. Under Section 38 of the Act, the person impounding an instrument shall send to the Collector an authenticated copy of such instrument together with a certificate in writing, stating the amount of duty and penalty levied in respect there of and shall send such amount to the Collector or to such person as he may appoint in this behalf. Under Section 40 of the Act when the Collector impounds any instrument under Section 33 or receives any instrument sent to him under Section 38(2) of the Act and if he is of the opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by an endorsement thereon that it is duly stamped or that it is not so chargeable as the case may be. However if he is of the opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same together with a penalty of Rs.5/-, or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion there of where such amount exceeds or falls short of Rs.5/-. Section 47-A of the Act lays down that where the Registering Officer has reason to believe that the market value of the property which is the subject matter of the instrument presented for registration has not been truly set forth in the instrument or that the value arrived at by him as per guidelines prepared or caused to be prepared by the government from time to time

had not been adopted by the parties, he may keep pending such instrument and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereof. Proviso to section 47-A(1) envisages that such a reference shall not be made by the Registering Officer unless an amount equal to 50% of the deficit duty arrived at by him is deposited by the party concerned. Section 47-A(2) provides that on receipt of reference by the Registering Officer under Sub-Section (1) the Collector, shall, after giving the parties an opportunity of making the representation and after holding the enquiry determine the market value of the property which is subject matter of such instrument and the duty. Under Sub-Section (3) the Collector may suo motu within two years from the date of registration of an instrument not already referred to him under Sub-Section (1) call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is subject of such instrument and the duty payable thereon and if he has reason to believe that the market value of such property has not been truly set forth in the instrument he may determine the market value of such property and the duty in accordance with the procedure under Sub-Section (2). The difference if any, in the amount of duty shall be payable by the person liable to pay the duty. Sub-Section (4) provides that if any person is aggrieved by an order of the Collector under Sub-Section (2) or Sub-Section (3), he may appeal to the appellate authority specified in Sub-Section (5). Sub-Section (5) prescribes the fora for filing the appeals.

From the provisions mentioned above, it is clear that an instrument can be referred to the Collector under two different set of circumstances. One set of circumstances is traceable to the provisions of Section 33, Section 38 and Section 40 of the Act where an instrument is found not duly stamped. In this category, the Registering Authority himself impounds the documents and forwards the same to the Collector for an

order to be passed under Section 40 of the Act. In the other set of circumstances reference is made to the Collector under Section 47-A (2) or the Collector himself may suo motu take action under Section 47-A(3) of the Act. It is only in respect of an order passed under the latter category of cases, i.e., the cases falling under section 47-A that an appeal is provided. It is apt to extract Section 47-A(4) of the Act in this context.

> " (4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may appeal to the appellate authority specified in sub-section (5). All such appeals shall be preferred within such time and shall be heard and disposed of in such manner, as may be prescribed by rules made therein."

It is thus clear that an order passed under Section 47-A(2) or (3) of the Act is amenable to the remedy of appeal under sub-section (4), but no such remedy is provided against an order passed under any other provision of the Act including Section 40 of the Act.

From a perusal of the contents of the show cause notice dated 15.5.2004 and the order dated 28.9.2004 impugned in the writ petition, it is evident that the second respondent was of the view that the document presented for registration is not duly stamped, i.e., there is a deficit in the payment of stamp duty. It is therefore not a case of improper calculation of the market value falling under Section 47-A of the Act. In order to be further satisfied in this regard, we have summoned the original record and the learned Government Pleader placed the record before us. We have noticed from the record that the first respondent after consulting the second respondent, impounded the document in question under section 33 of the Act and has forwarded the same to the second respondent for final adjudication. Accordingly, the second respondent issued show cause notice dated 15.5.2004 under Section 40 of the Act. After receiving the explanation from the appellant, he passed the final orders which are questioned in the writ petition.

From the facts narrated above and the material on record we are satisfied that the order dated 28.9.2004 of the second respondent was passed under Section 40 of the Act and not under Section 47-A of the Act. Hence, the remedy of appeal provided under Section 47-A (4) and (5) of the Act is not available to the appellant in order to challenge the said order in appeal. In the absence of any alternative remedy, the petitioner is entitled to question the correctness or otherwise of the order of the second respondent by way of writ petition.

For the reasons mentioned above, the appeal is allowed. The order of the learned Single Judge is set aside. The writ petition is admitted for hearing.

As a sequel to disposal of the writ appeal, W.A.M.P.No.2495 of 2006 is disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

26th December, 2006

G.S.SINGHVI, CJ

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